

Decision 05-05-031 May 26, 2005

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Joint Application of AT&T Communications of California, Inc. (U 5002 C) and WorldCom, Inc. for the Commission to Reexamine the Recurring Costs and Prices of Unbundled Switching in Its First Annual Review of Unbundled Network Element Costs Pursuant to Ordering Paragraph 11 of D.99-11-050.

Application 01-02-024
(Filed February 21, 2001)

Application of AT&T Communications of California, Inc. (U 5002 C) and WorldCom, Inc. for the Commission to Reexamine the Recurring Costs and Prices of Unbundled Loops in Its First Annual Review of Unbundled Network Element Costs Pursuant to Ordering Paragraph 11 of D.99-11-050.

Application 01-02-035
(Filed February 28, 2001)

Application of The Telephone Connection Local Services, LLC (U 5522 C) for the Commission to Reexamine the Recurring Costs and Prices of the DS-3 Entrance Facility Without Equipment in Its Second Annual Review of Unbundled Network Element Costs Pursuant to Ordering Paragraph 11 of D.99-11-050.

Application 02-02-031
(Filed February 28, 2002)

Application of AT&T Communications of California, Inc. (U 5002 C) and WorldCom, Inc. for the Commission to Reexamine the Recurring Costs and Prices of Unbundled Interoffice Transmission Facilities and Signaling Networks and Call-Related Databases in Its Second Annual Review of Unbundled Network Element Costs Pursuant to Ordering Paragraph 11 of D.99-11-050.

Application 02-02-032
(Filed February 28, 2002)

Application of Pacific Bell Telephone Company (U 1001 C) for the Commission to Reexamine the Costs and Prices of the Expanded Interconnection Service Cross-Connect Network Element in the Second Annual Review of Unbundled Network Element Costs Pursuant to Ordering Paragraph 11 of D.99-11-050.

Application 02-02-034
(Filed February 28, 2002)

Application of XO California, Inc. (U 5553 C) for the Commission to Reexamine the Recurring Costs of DS1 and DS3 Unbundled Network Element Loops in Its Second Annual Review of Unbundled Network Element Costs Pursuant to Ordering Paragraph 11 of D.99-11-050.

Application 02-03-002
(Filed March 1, 2002)

**OPINION MODIFYING DECISION (D.) 04-09-063 AND D.05-03-037
TO CORRECT UNBUNDLED TANDEM SWITCHING RATE**

Background

In September 2004, the Commission issued Decision 04-09-063 adopting permanent unbundled network element (UNE) rates for Pacific Bell Telephone

Company d/b/a SBC California (SBC-CA). The decision contained three appendices listing new rates -- Appendix A contained the newly adopted rates, Appendix B compared proposed and adopted rates, and Appendix C listed usage based UNE switching rates for use in reciprocal compensation payments between carriers. This decision modifies an error in the unbundled tandem switching rate in Appendix C of D. 04-09-063. Corrected versions of Appendices A, B, and C are attached to this order. Because Appendix C of D.04-09-063 was used to create tables for a subsequent order, this order also corrects Appendix A of D.05-03-026 and Appendix B of D.05-03-037.

Error in Appendix C

Following issuance of D.04-09-063, staff from the Telecommunications Division notified the Administrative Law Judge (ALJ) in this proceeding that Appendix C of the order contains a rate for unbundled tandem switching “setup per completed message” that differs from the adopted rate for that same element shown in Appendices A and B of the decision. Specifically, the rate for this UNE is \$0.001562 per completed message in Appendix C, while it is \$0.000179 in Appendices A and B.

Appendix C was included in the decision to address the concern of Pac-West Telecomm Inc. (PacWest) that if the Commission adopted a flat rate structure for the unbundled switching UNE, it should not be applied in the context of reciprocal compensation arrangements between competitive local exchange carriers and SBC-CA. The intent of Appendix C was to provide usage-based switching rates for reciprocal compensation even though the Commission was adopting non-usage based UNE switching rates in Appendices A and B. (D.04-09-063, *mimeo.* at 242.)

In a November 5, 2004 ruling, the ALJ solicited parties' comments on this potential error and discrepancy in this rate. The ALJ asked whether it was appropriate to simply delete the unbundled tandem switching rates from Appendix C because usage-based tandem switching rates were already included in Appendices A and B and there was no need for them to be included in Appendix C in the first place.

AT&T Communications of California (AT&T) agreed with the ALJ's suggestion that the usage-based tandem switching rates in Appendix C were unnecessary and should be deleted. In contrast, SBC-CA responded that the correct rate for unbundled tandem switching setup per completed message was the higher rate in Appendix C and it should replace the lower rate in Appendices A and B. According to SBC-CA, the higher tandem rate in Appendix C includes tandem usage costs that were apparently left out when the rate was calculated for Appendix A.

AT&T opposes SBC-CA's suggestion to change Appendix A to the higher tandem switching rate found in Appendix C. AT&T explains that when the HM 5.3 cost model, which was used in D.04-09-063 to establish UNE rates, is run with the Commission's adopted inputs, the resulting rate for tandem switching setup per completed message is the \$0.000179 found in Appendix A. The \$0.001562 rate in Appendix C does not match the price generated by HM 5.3 using Commission adopted inputs and it would be improper to adopt this rate as SBC-CA suggests. In addition, AT&T comments that Appendix A should be modified to remove the tandem switching setup per attempt rate element because it is unclear how this rate was derived from HM 5.3.

Clearly, there is an error in D.04-09-063 in that Appendices A, B, and C contain different rates for the same rate element. Unfortunately, the parties do

not agree on the correct course of action. AT&T points to the rate in Appendix A as the correct one, but suggests other modifications to the unbundled tandem switching rate elements. SBC maintains that the correct rate is the higher one found in Appendix C. Initially, AT&T's position was compelling that the proper course of action is to correct the unbundled tandem switching "setup per completed message" rate element in Appendix C to match the rate in Appendix A because when HM 5.3 is run with Commission adopted inputs, the resulting rates are the ones found in Appendix A.

We decline SBC-CA's suggestion for the opposite result because SBC-CA has not explained or supported with calculations why the higher rate in Appendix C is the correct one. SBC-CA had several opportunities to comment that the Commission's calculation of the rate for tandem switching setup per completed message was wrong, yet SBC-CA never raised this objection to the calculation of this rate element in the many rounds of comment leading up to D.04-09-063.

Following comments on the Draft Decision, SBC-CA provided a new and different explanation of why the Commission adopted rate for the unbundled tandem switching rate element in Appendix A is wrong and why it would be legal and factual error to rely on that rate to fix the error in Appendix C. SBC-CA contends there was an error in the HM 5.3 model in the formula calculating this rate element and it provides a method for correcting this error. As SBC-CA now alleges, the rates in Appendix A and C are both wrong and the actual rate lies in between the two. Specifically, SBC-CA maintains the formula for the tandem rate element mistakenly relies on the unit cost of end office switching. When HM 5.3 is run with a flat-rated port assumption, as it was to set UNE switching rates in D.04-09-063, HM 5.3 inappropriately eliminates all tandem costs and

leaves only a signaling cost for tandem switching. To correct this, SBC-CA suggests adding the signaling costs from Appendix A to the switch holding costs

from Appendix C, and it shows this mathematical approach is the same method applied to other switching rate elements. Thus, the new formula is:

Holding time + Signaling = Setup per message

When the holding time from Appendix C and the signaling cost from Appendix A are substituted into this formula, the results are as follows:

$$$.000461 + .000179 = $.000640$$

Commission rules specify that comments on draft decisions may not include new factual information. We are certainly wary of modifying our prior order based on an explanation from one party that was not presented earlier in response to the ALJ's ruling soliciting review and comment on this issue. It is unclear why SBC-CA did not provide this analysis explaining the error in the calculation of the unbundled tandem switching rates several months ago when the issue first arose. On the other hand, if there is an error in Appendix A, it should be fixed. No parties responded to SBC-CA's comments providing this new calculation. It appears there would be little value and much delay if we required SBC-CA to file a petition to modify the original order on this issue, particularly when there is no opposition to its newest proposal. Furthermore, the Commission's Telecommunications Division staff was able to verify that indeed there was an error in the formula for this rate element in HM 5.3, exactly as SBC-CA has described. SBC-CA's newest proposal that we simply add signaling costs and holding time costs is logical and we will adopt it.

We decline AT&T's suggestion to delete unbundled tandem switching setup per attempt charges from Appendix A. This too, should have been pointed out in the many rounds of comments leading up to D.04-09-063 and there is simply not enough record or analysis supporting the modification AT&T suggests. If AT&T or any party believes this rate is incorrect, it can file a petition

to modify D.04-09-063 and provide a clearer explanation of why this rate element, originally adopted in D.99-11-050, is no longer necessary.

As part of today's order, we must also correct subsequent orders that relied on Appendices A, B and C of D.04-09-063. These appendices were relied on in D.05-03-026 when the Commission settled UNE true-up and shared and common cost issues. D.05-03-026 was later corrected by D.05-03-037. Thus, this order modifies Appendix A of D.05-03-026 and Appendix B of D.05-03-037 to show the correct rate for unbundled tandem switching. All corrected appendices are attached to this order.

Comments on Draft Decision

The Commission mailed the draft decision of the ALJ in this matter to the parties in accordance with Section 311(g)(1) and Rule 77.7 of the Rules of Practice and Procedure. Comments were filed by SBC-CA and there were no reply comments. Changes in response to SBC-CA's comments are incorporated into the body of this decision.

Assignment of Proceeding

Michael R. Peevey is the Assigned Commissioner and Dorothy J. Duda is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. In D.04-09-063, the Commission adopted UNE rates for SBC-CA, including unbundled tandem switching rates.
2. When the HM5.3 cost model is run with the inputs adopted in D.04-09-063, the resulting rate for unbundled tandem switching setup per completed message is \$0.000179, as found in Appendix A of that order.

3. The rate for unbundled tandem switching setup per completed message in Appendix C of D.04-09-063 does not match the price generated by HM 5.3 using Commission adopted inputs.

4. The formula for the unbundled tandem switching setup per completed message in HM 5.3 contains an error because it is the same formula used to calculate end office intra-office setup rates and it zeroes out tandem costs when HM 5.3 is run with a flat-rated port assumption.

5. HM 5.3 calculates switching usage setup per message rate elements by adding holding time to signaling costs.

6. Appendix C of D.04-09-063 was relied on in D.05-03-026, which was later corrected in D.05-03-037.

Conclusions of Law

1. It is reasonable to calculate tandem setup per message costs by adding tandem holding time costs and signaling costs, which is the same method used for other switching rate elements.

2. Appendices A, B and C of D.04-09-063 should be modified so that the rate for unbundled tandem switching setup per completed message is \$0.000640.

3. Appendix A of D.05-03-026 and Appendix B of D.05-03-037 should be modified to show a current rate for unbundled tandem switching setup per completed message of \$0.000640 and a current rate with a 19% mark-up of \$0.000629.

O R D E R

IT IS ORDERED that:

1. Appendices A, B, and C of Decision (D.) 04-09-063 are modified as set forth in this order.
2. Appendix A of D.05-03-026 and Appendix B of D.05-03-037 are modified as set forth in this order.
3. Application (A.) 01-02-024, A.01-02-035, A.02-02-031, A.02-02-032, A.02-02-034, and A.02-03-002 are closed.

This order is effective today.

Dated May 26, 2005, at San Francisco, California.

MICHAEL R. PEEVEY
President
GEOFFREY F. BROWN
SUSAN P. KENNEDY
DIAN M. GRUENEICH
JOHN A. BOHN
Commissioners

[Duda Appendices A-C](#)